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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Implementation of the Non-Accounting
Safeguards of Sections 271 and 272 of the
Communications Act of 1934, as amended.

CC Docket No. 96-149

ORDER ON RECONSIDERATION

Adopted: February 19, 1997

Released: February 19, 1997

By the Commission:

1. In the *Non-Accounting Safeguards First Report and Order*, we adopted non-accounting safeguards, pursuant to section 272 of the Communications Act, to govern entry by the Bell Operating Companies (BOCs) into certain new markets.¹ Pursuant to section 1.108 of the Commission's rules,² on our own motion we make minor modifications to paragraphs 106 and 121 of the *Non-Accounting Safeguards First Report and Order*, in order to correct and clarify the meaning of these paragraphs. Neither of these modifications require any change to the rules adopted in the proceeding. We also make several non-substantive changes to the rules adopted in the *Non-Accounting Safeguards First Report and Order* as they appeared in the Order released by the Commission on December 24, 1996. These changes are primarily to correct typographical errors.

2. In paragraph 106 of the *Non-Accounting Safeguards First Report and Order*, we decided, in conformity with our *Computer II*³ and *Computer III*⁴ precedent, to exclude three

¹ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489 (rel. Dec. 24, 1996) (*Non-Accounting Safeguards First Report and Order*).

² 47 C.F.R. § 1.108.

³ See *Amendment of Section 64.702 of the Commission's Rules and Regulations*, 77 FCC 2d 384 (1980) (*Computer II Final Order*), *recon.*, 84 FCC 2d 50 (1980) (*Computer II Reconsideration Order*), *further recon.*, 88 FCC 2d 512 (1981) (*Computer II Further Reconsideration Order*), *affirmed sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

categories of protocol processing services from our general determination that protocol processing services are information services. These categories include protocol processing: 1) involving communications between an end user and the network itself (e.g., for initiation, routing, and termination of calls) rather than between or among users; 2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE); and 3) involving internetworking (conversions taking place solely within the carrier's network to facilitate provision of a basic network service, that result in no net conversion to the end user).⁵ In paragraph 106, we referred to all three types of excepted protocol processing services, collectively, as "no net" protocol processing services. Upon further reflection, we conclude that our statement that all three exempt services do not involve net protocol conversions is not strictly correct, since the second category of excepted protocol processing services includes services that may involve net protocol conversions to end users.⁶ Therefore, we hereby revise the text of paragraph 106 (footnotes omitted) to read:

106. We note that, under *Computer II* and *Computer III*, we have treated three categories of protocol processing services as basic services, rather than enhanced services. These categories include protocol processing: 1) involving communications between an end user and the network itself (e.g., for initiation,

⁴ See *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III)*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987) (*Phase I Reconsideration Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Phase I Further Reconsideration Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Phase I Second Further Reconsideration Order*); *Phase I Order and Phase I Reconsideration Order vacated*, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); *Phase II*, 2 FCC Rcd 3072 (1987) (*Computer III Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988) (*Phase II Reconsideration Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Reconsideration Order*); *Phase II Order vacated*, *California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceeding*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *BOC Safeguards Order*, 6 FCC Rcd 7571 (1991), *vacated in part and remanded*, *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 115 S. Ct. 1427 (1995).

⁵ See *IDCMA Petition for a Declaratory Ruling that AT&T's Interspan Frame Relay Service is a Basic Service*, Memorandum Opinion and Order, 10 FCC Rcd 13,717, 13,719, ¶¶ 14-16 (Com. Car. Bur. 1995) (*Frame Relay Order*); *Computer III Phase II Order*, 2 FCC Rcd at 3081-82, ¶¶ 64-71.

⁶ The Commission has previously stated, "The concept of permitting protocol conversions necessitated by the introduction of new technology to be offered as basic service was introduced to cover those instances in which '[basic network] technology is introduced piecemeal, and appropriate conversion equipment is used within the network to maintain compatibility [between end user equipment and the network].'" *Computer III Phase II Order*, 2 FCC Rcd at 3082, ¶ 70 (quoting *Communications Protocols Under Section 64.702 of the Commission's Rules and Regulations*, 95 FCC 2d 584, 591, ¶ 16 (1983) (*Protocols Order*)). Protocol conversions that fall within this category include net analog-to-digital and digital-to-analog conversions performed within the network to enable end users using different types of network interfaces to communicate with one another. See *Protocols Order*, 95 FCC 2d at 591, ¶ 16.

routing, and termination of calls) rather than between or among users; 2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE); and 3) involving internetworking (conversions taking place solely within the carrier's network to facilitate provision of a basic network service, that result in no net conversion to the end user). We agree with PacTel that analogous treatment should be extended to these categories of protocol processing services under the statutory regime. Because the listed protocol processing services are information service capabilities used "for the management, control, or operation of a telecommunications system or the management of a telecommunications service," they are excepted from the statutory definition of information service. These excepted protocol conversion services constitute telecommunications services, rather than information services, under the 1996 Act.

3. Paragraph 121 of the *Non-Accounting Safeguards First Report and Order* primarily concerns the statutory restrictions applicable to BOC provision of centralized data storage and retrieval services designated as incidental interLATA services in section 271(g)(4).⁷ In the second sentence of paragraph 121, however, we concluded that "BOCs may not provide interLATA information services, except for information services covered by section 271(g)(4), in any of their in-region states prior to obtaining section 271 authorization."⁸ Upon further reflection, we conclude that we should revise that sentence because pursuant to other subparts of section 271(g), certain other interLATA information services are designated as incidental interLATA services,⁹ which BOCs are permitted to provide in their own regions prior to obtaining section 271 authorization. Therefore, we modify the language in this sentence to clarify that BOCs may provide any interLATA information service designated as an incidental interLATA service in their in-region states prior to obtaining section 271 authorization. The text of paragraph 121 (footnotes omitted) is revised to read:

121. Remote Databases/Network Efficiency. BOCs may not provide interLATA services in their own regions, either over their own facilities or through resale, before receiving authorization from the Commission under section 271(d). Therefore, we conclude that BOCs may not provide interLATA information services, except for those designated as incidental interLATA services under section 271(g), in any of their in-region states prior to obtaining section 271

⁷ Section 271(g)(4) designates as an incidental interLATA service the interLATA provision by a BOC or its affiliate "of a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA." 47 U.S.C. § 271(g)(4).

⁸ *Non-Accounting Safeguards Order* at ¶ 121.

⁹ See *id.* at ¶¶ 94-95.

authorization. Section 271(g)(4) designates as an incidental interLATA service the interLATA provision by a BOC or its affiliate of "a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA." Because BOCs were able to provide incidental interLATA services immediately upon enactment of the 1996 Act, they may provide interLATA information services that fall within the scope of section 271(g)(4) without receiving section 271(d) authorization from the Commission. Since section 271(g)(4) services are not among the incidental interLATA services exempted from section 272 separate affiliate requirements, however, they must be provided in compliance with those requirements. To the extent that parties have argued in the record that centralized data storage and retrieval services that fall within section 271(g)(4) either are not interLATA information services, or are not subject to the section 272 separate affiliate requirements, we specifically reject these arguments.

4. We also modify the rules published in Appendix B of the *Non-Accounting Safeguards First Report and Order*, as released by the Commission on December 24, 1996, to correct typographical and other minor errors.¹⁰ The complete corrected final rules are attached as Appendix A to this Order. The corrections to the rules are as follows:

The title of section 53.201 in the index is corrected to read "Services for which a section 272 affiliate is required".

The letters designating the subsections of section 53.3 that concern the definition of Bell Operating Company (BOC), are corrected from (A) to (1), (B) to (2), (C) to (3).

Paragraph (3) under Bell Operating Company (BOC) is corrected to read "does not include an affiliate of any such company, other than an affiliate described in paragraph (1) or (2) of this section."

The letters designating the subsections of section 53.3 that concern the definition of Local Access Transport Area (LATA), are corrected from (A) to (1), (B) to (2).

Rule section 53.100 in the text is corrected to section 53.101.

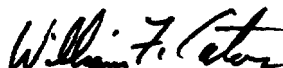
¹⁰ The complete rules published in the Federal Register on January 21, 1997, are correct. 62 Fed. Reg. 2927, 2967-69 (1997). The errors occurred only in the version of the rules contained in the Order released by the Commission on December 24, 1996, prior to publication in the Federal Register.

Rule section 53.205 in the text is reserved and former rule section 53.205 is corrected to section 53.207.

5. Final Regulatory Flexibility Certification: In the *Non-Accounting Safeguards First Report and Order*, we certified that the rules adopted in that Order would not have a significant impact on a substantial number of small entities, as required by the Regulatory Flexibility Act, as amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996).¹¹ The changes we adopt in this order do not affect our certification in the *Non-Accounting Safeguards First Report and Order*.

6. Accordingly, IT IS ORDERED that pursuant to the authority contained in sections 271 and 272 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 271, 272, and pursuant to section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, the Commission reconsiders its decision in the *Non-Accounting Safeguards First Report and Order* on its own motion to the extent specified herein.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

¹¹ *Non-Accounting Safeguards Order* at ¶¶ 357-361.

APPENDIX A
Corrected Version -- Part 53 of Title 47 of the Code of Federal Regulations

**PART 53 -- SPECIAL PROVISIONS CONCERNING
BELL OPERATING COMPANIES**

Subpart A - General Information

Sec.

53.1 Basis and purpose.

53.3 Terms and definitions.

Subpart B - Bell Operating Company Entry into InterLATA Services.

53.101 Joint marketing of local and long distance services by interLATA carriers.

Subpart C - Separate Affiliate; Safeguards.

53.201 Services for which a section 272 affiliate is required.

53.203 Structural and transactional requirements.

53.205 Fulfillment of certain requests. [Reserved]

53.207 Successor or assign.

Subpart D - Manufacturing by Bell Operating Companies.

53.301 [Reserved]

Subpart E - Electronic Publishing by Bell Operating Companies.

53.401 [Reserved]

Subpart F - Alarm Monitoring Services.

53.501 [Reserved]

AUTHORITY: Sections 1-5, 7, 201-05, 218, 251, 253, 271-75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151-55, 157, 201-05, 218, 251, 253, 271-75, unless otherwise noted.

Subpart A - General Information.**§ 53.1 Basis and purpose.**

(a) Basis. These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) Purpose. The purpose of these rules is to implement sections 271 and 272 of the Communications Act of 1934, as amended, 47 U.S.C. 271 and 272.

§ 53.3 Terms and definitions.

Terms used in this part have the following meanings:

Act. The "Act" means the Communications Act of 1934, as amended.

Affiliate. An "affiliate" is a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this part, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

AT&T Consent Decree. The "AT&T Consent Decree" is the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, in the United States District Court for the District of Columbia, and any judgment or order with respect to such action entered on or after August 24, 1982.

Bell Operating Company (BOC). The term "Bell operating company"

(1) means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and

(2) includes any successor or assign of any such company that provides wireline telephone exchange service; but

(3) does not include an affiliate of any such company, other than an affiliate described in paragraph (1) or (2) of this section.

In-Region InterLATA service. "In-region interLATA service" is interLATA service that originates in any of a BOC's in-region states, which are the states in which the BOC or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on February 7, 1996. For the purposes of this part, 800 service, private line service, or equivalent services that terminate in a BOC's in-region state and allow the called party to determine the interLATA carrier are considered to be in-region interLATA service.

InterLATA Service. An "interLATA service" is a service that involves telecommunications between a point located in a LATA and a point located outside such area. The term "interLATA service" includes both interLATA telecommunications services and interLATA information services.

InterLATA Information Service. An "interLATA information service" is an information service that incorporates as a necessary, bundled element an interLATA telecommunications transmission component, provided to the customer for a single charge.

Local Access and Transport Area (LATA). A "LATA" is a contiguous geographic area:

- (1) established before February 8, 1996 by a BOC such that no exchange area includes points within more than one metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree; or
- (2) established or modified by a BOC after February 8, 1996 and approved by the Commission.

Local Exchange Carrier (LEC). A "LEC" is any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under section 332(c) of the Act, except to the extent that the Commission finds that such service should be included in the definition of such term.

Out-of-Region InterLATA service. "Out-of-region interLATA service" is interLATA service that originates outside a BOC's in-region states.

Section 272 affiliate. A "section 272 affiliate" is a BOC affiliate that complies with the separate affiliate requirements of section 272(b) of the Act and the regulations contained in this part.

Subpart B - Bell Operating Company Entry Into InterLATA Services.**§53.101 Joint marketing of local and long distance services by interLATA carriers.**

(a) Until a BOC is authorized pursuant to section 271(d) of the Act to provide interLATA services in an in-region State, or until February 8, 1999, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) of the Act with interLATA services offered by that telecommunications carrier.

(b) For purposes of applying section 271(e) of the Act, telecommunications carriers described in paragraph (a) of this section may not:

(1) Market interLATA services and BOC resold local exchange services through a "single transaction." For purposes of this section, we define a "single transaction" to include the use of the same sales agent to market both products to the same customer during a single communication;

(2) Offer interLATA services and BOC resold local exchange services as a bundled package under an integrated pricing schedule.

(c) If a telecommunications carrier described in paragraph (a) of this section advertises the availability of interLATA services and local exchange services purchased from a BOC for resale in a single advertisement, such telecommunications carrier shall not mislead the public by stating or implying that such carrier may offer bundled packages of interLATA service and BOC local exchange service purchased for resale, or that it can provide both services through a single transaction.

Subpart C - Separate Affiliate; Safeguards.**§ 53.201 Services for which a section 272 affiliate is required.**

For the purposes of applying section 272(a)(2) of the Act:

(a) Previously authorized activities. When providing previously authorized activities described in section 271(f) of the Act, a BOC shall comply with the following:

(1) A BOC shall provide previously authorized interLATA information services and manufacturing activities through a section 272 affiliate no later than February 8, 1997.

(2) A BOC shall provide previously authorized interLATA telecommunications services in accordance with the terms and conditions of the orders entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the AT&T Consent Decree that authorized such services.

(b) InterLATA information services. A BOC shall provide an interLATA information service through a section 272 affiliate when it provides the interLATA telecommunications transmission component of the service either over its own facilities, or by reselling the interLATA telecommunications services of an interexchange provider.

(c) Out-of-region interLATA information services. A BOC shall provide out-of-region interLATA information services through a section 272 affiliate.

§ 53.203 Structural and transactional requirements.

(a) Operational independence.

(1) A section 272 affiliate and the BOC of which it is an affiliate shall not jointly own transmission and switching facilities or the land and buildings where those facilities are located.

(2) A section 272 affiliate shall not perform any operating, installation, or maintenance functions associated with facilities owned by the BOC of which it is an affiliate.

(3) A BOC or BOC affiliate, other than the section 272 affiliate itself, shall not perform any operating, installation, or maintenance functions associated with facilities that the BOC's section 272 affiliate owns or leases from a provider other than the BOC.

(b) Separate books, records, and accounts. A section 272 affiliate shall maintain books, records, and accounts, which shall be separate from the books, records, and accounts maintained by the BOC of which it is an affiliate.

(c) Separate officers, directors, and employees. A section 272 affiliate shall have separate officers, directors, and employees from the BOC of which it is an affiliate.

(d) Credit arrangements. A section 272 affiliate shall not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the BOC of which it is an affiliate.

(e) Arm's-length transactions. A section 272 affiliate shall conduct all transactions with the BOC of which it is an affiliate on an arm's length basis, pursuant to the accounting rules described in § 32.27 of this chapter, with any such transactions reduced to writing and available for public inspection.

§ 53.205 **Fulfillment of certain requests. [Reserved]**

§ 53.207 **Successor or assign.**

If a BOC transfers to an unaffiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3) of the Act, such entity will be deemed to be an assign of the BOC under section 3(4) of the Act with respect to such transferred network elements. A BOC affiliate shall not be deemed a "successor or assign" of a BOC solely because it obtains network elements from the BOC pursuant to section 251(c)(3) of the Act.